

State Supreme Court: Prosecutor's office can't handle murder retrial

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EPHRATA — The Washington State Supreme Court has upheld an appeals court decision that ruled the entire Grant County Prosecutor's Office must be recused from handling the retrial of a Montana man who was previously convicted of first-degree murder of an Ephrata man.

David Nickels, 39, of Helena, Montana, was charged June 16, 2010, and convicted in 2012 of the first-degree murder of 35-year-old Sage Munro on the doorstep of his Ephrata residence in 2009. Though represented by counsel, Nickels had acquired additional legal assistance from Garth Dano, who was then a local criminal defense attorney.

After Nickels' 2012 conviction, for which he was sentenced to 25 years in prison, Dano conducted interviews with jurors and potential exonerating witnesses, according to court documents. Dano also received privileged materials through his participation in crafting the defense's strategy and theory of the case, documents show.

Then in 2014, while Nickels' appeal of his conviction was pending, Dano was elected Grant County prosecutor. In 2017, the Court of Appeals reversed Nickels' conviction, ruling the jury instruction deviated from standard instructions, and the case was remanded back to Grant County for a retrial.

As retrial proceedings progressed, Nickels' attorneys raised the point that Grant County Prosecutor Garth Dano represented Nickels before he was elected prosecutor. In addition, before he started working at the prosecutor's office, now-retired Chief Deputy Prosecutor Alan White represented a man named Ian Libby, who Nickels' defense team argued was the person who killed Munro, before White started working at the prosecutor's office.

Nickels' defense team argued that the entire prosecutor's office should be recused from handling the case, fearing that Dano or White would give sensitive information to other prosecutors handling the case.

Judge David Estudillo denied Nickels' motion, and instead ruled the prosecutor's office could handle the retrial, but Dano and White were barred from having any involvement in the case.

But, in a November ruling, the appeals court judges reversed Estudillo's decision. The decision hinged on an affidavit from Nickel's defense team that showed Dano was "privy to privileged work product information" when he was associated with Nickels' defense team.

In their decision, Chief Judge Robert Lawrence-Berrey and Acting Chief Judge Rebecca L. Pennell also noted Dano had met with Nickels individually after the entry of the jury's verdict and "he presumably engaged in confidential attorney-client communications."

Due to the seriousness of the charge, the judges ruled that no amount of screening would be sufficient to fully separate Dano from the case.

"Because Mr. Nickels has been charged with a serious offense, the same offense about which the Grant County Prosecuting Attorney has acquired privileged information through work product and attorney-client communications during his time as a private attorney, the entire Grant County Prosecuting Attorney's Office must be recused from Mr. Nickels' first degree murder prosecution."

A majority of the state Supreme Court agreed with that decision, saying that elected county prosecutors possess considerable powers over their offices and employees. In the limited circumstance where an elected prosecutor had previously represented a defendant in the same case or a closely interwoven matter, the court ruled the entire office must be recused.

"In those cases, office-wide disqualification — not screening — is required to preserve the appearance of a just proceeding and the public's confidence in the impartial administration of justice," wrote Justice Susan Owens in the court's lead opinion.